

103 KAR 18:160. Partnership income, credits, and payments subject to withholding.

RELATES TO: KRS 141.010(10), 141.020, 141.0205, 141.206, 141.300, 26 U.S.C. 7704(b)
STATUTORY AUTHORITY: KRS 141.050(4), 141.206

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any provisions of KRS Chapter 141. KRS 141.206 authorizes the department to promulgate administrative regulations governing the filing of tax returns and withholding on certain types of payments. This administrative regulation prescribes procedures for withholding income tax on net distributive share income and filing a composite return by a general partnership.

Section 1. Definitions. (1) "Allowable adjustments" means deductions paid by the general partnership and allowable as an adjustment to gross income by the individual partner under KRS 141.010(10) and apportioned to Kentucky under KRS 141.206;

(2) "Lower-tier partnership" means a general partner that is itself a general partnership.

(3) "Net distributive share income" means the general partner's pro rata share of the total of the general partnership's items of income or loss apportioned to Kentucky under KRS 141.206, minus allowable adjustments. Net distributive share income includes ordinary income, capital gains or losses, rents, dividends, interest, and guaranteed payments.

Section 2. Withholding. (1) For taxable years ending on or after December 31, 2004, every general partnership required to file an annual return under KRS 141.206(2) shall withhold income tax at the maximum tax rate provided in KRS 141.020 on the net distributive share income of each nonresident individual partner.

(2) The general partnership shall be liable to Kentucky for the payment of the tax required to be withheld and shall recover the amount of tax withheld from the nonresident individual partner.

(3) Credits allowed by KRS 141.0205(1) and 141.020 (3)(c) that are distributed by a general partnership to the nonresident individual partner may be deducted from the amount to be withheld if the credit is reasonably expected to be claimed in the current tax year. For example, the recycling and composting credit allowed under KRS 141.390 shall be limited to ten (10) percent of the credit in the year approved or twenty-five (25) percent of the individual's tax liability, whichever is less. The nonresident individual partner may file a return to claim the remaining credit in future years.

(4) Withholding shall not be required if:

(a) The nonresident individual partner's net distributive share income is less than \$1,000;

(b) The general partnership demonstrates that the nonresident individual partner's net distributive share income is not subject to Kentucky income tax;

(c) The general partnership is a publicly-traded partnership as defined by 26 U.S.C. Section 7704(b) of the Internal Revenue Code that is treated as a partnership for the purposes of the Internal Revenue Code; or

(d) The nonresident individual partner elects to be included in a composite return filed by the general partnership under Section 3 of this administrative regulation.

(5) If withholding is required, the general partnership on or before the 15th day of the fourth month after the end of its taxable year shall:

(a) File with the Kentucky Revenue Cabinet, Revenue Form 40A201, "740NP-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report" reporting the number of nonresident individual partners, the total net distributive share income

subject to withholding, total allowable credits, and the total amount of Kentucky income tax withheld;

(b) Provide each nonresident individual partner with Revenue Form 40A200, "PTE-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income" or an approved substitute statement showing the partner's net distributive share income subject to withholding, allowable credit and the amount of Kentucky income tax withheld; and

(c) Remit the tax withheld.

(6) A lower-tier general partnership shall be subject to the same requirements of this section to withhold and pay income tax on the net distributive share income of each of its nonresident individual partners.

Section 3. Composite Return. (1) A nonresident individual partner of a general partnership may elect to be included in the composite income tax return by submitting a written statement to the partnership thirty (30) days before the time prescribed for filing the partnership's return.

(2) A general partnership may file a composite income tax return on behalf of electing nonresident individual partners. The partnership shall for each nonresident partner electing to be included in the composite return:

(a) Compute the amount of tax due by multiplying the partner's net distributive share income by the highest marginal rate provided in KRS 141.020;

(b) File with the Department of Revenue, Form 42A740-NP, "740-NP, Kentucky Nonresident Tax Return", on or before the 15th day of the fourth month after the end of its taxable year;

(c) Attach a schedule reporting the name, address, Social Security number, net distributive share income, allowable credits, and the tax paid on behalf of each electing nonresident individual partner;

(d) Provide each nonresident individual partner a statement showing the amount of income reported on Form 740-NP and the amount of tax paid by the partnership on behalf of the individual partner; and

(e) Remit the tax with the return.

(3) A general partnership filing a composite return shall make estimated tax payments if required under the provisions of KRS 141.300.

Section 4. The reporting of net distributive share income on Form PTE-WH or a composite return and payment of tax due by the partnership shall satisfy the filing requirements of KRS 141.206 for a nonresident individual partner whose only Kentucky source income is net distributive share income. A nonresident individual partner may file an individual return to take advantage of the graduated tax rates and apply the tax paid on his or her behalf against tax imposed for the taxable year in which the income is reported.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 40A200, "PTE-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income," September 2005;

(b) Revenue Form 40A201, "740NP-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report," September 2005; and

(c) Revenue Form 42A740-NP, "740-NP, Kentucky Income Tax Return Nonresident or Part-Year resident," September 2005.

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